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Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal, submitted in accordance with Commission on Human Rights resolution 2005/78.

Summary

On 10 April 2005, the Government of the Kingdom of Nepal signed an agreement with the High Commissioner for Human Rights concerning the establishment of an office in Nepal. On 20 April 2005 the Commission on Human Rights adopted resolution 2005/78, welcoming the signing of the Agreement. This report is submitted by the High Commissioner pursuant to the Commission's resolution.

The Representative of the High Commissioner arrived in Nepal on 7 May 2005 to head the new office and an initial team of 10 human rights officers together with support staff. The information and analysis contained in the report reflects the team's investigations and work until end August 2005, and prior to the deployment of full staffing.

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The Commission on Human Rights, as well as recent conclusions of human rights treaty bodies and communications from special procedures, raised concern with regard to serious violations of international human rights and humanitarian law, committed by State authorities and by the Communist Party of Nepal (CPN) (Maoist). Given its mandate, the applicable law and the human rights situation in Nepal, the Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) is concerned about respect for human rights in the context of the armed conflict, respect for democratic rights, and long-standing human rights issues.

OHCHR-Nepal received reports of violations by State authorities in the conduct of the armed conflict as well as violations of democratic rights, including extrajudicial executions, the killing of civilians and the failure to protect civilians, disappearances, arbitrary arrest and detention, torture, threats, and violations of the rights to freedom of expression, freedom of assembly and freedom of association. In the few instances of which OHCHR-Nepal is aware, disciplinary action taken by State authorities to secure accountability for violations was limited, given the severity of the violations in question. State authorities have provided OHCHR-Nepal with generally good cooperation.

OHCHR-Nepal received information confirming violations of international law by CPN (Maoist), including summary executions, the killing of civilians, abductions, torture, extortion, forced recruitment, the bombing of civilian buildings and the recruitment of children, as well as serious economic and related disruption suffered by the general population resulting from *bandhs* (forced general strikes). CPN (Maoist) reports taking disciplinary action against some personnel responsible for violations and its leadership has assured OHCHR-Nepal of its full cooperation.

OHCHR-Nepal is investigating reports of human rights violations committed by "vigilante" groups that receive direct or indirect support from the security forces.

OHCHR-Nepal is concerned about the situation of children affected by the armed conflict — including the abduction and conscription of children and limitations on their access to education. It is also concerned about violence against women and the human rights situation of Dalits and members of indigenous nationalities, human rights defenders, journalists, leaders of political parties and internally displaced persons.

Economic impoverishment, severe social inequalities, vulnerability to trafficking and poor labour conditions, and caste, ethnic and gender discrimination are among the human rights concerns that predate the current crisis. Rights to health, to food and to adequate shelter, and other economic, social and cultural rights, are similarly placed at risk by discrimination, socio-economic conditions and the armed conflict.

Once fully established, OHCHR-Nepal will comprise approximately 50 international staff, together with national staff. It is establishing its headquarters in Kathmandu with four regional offices located in the towns of Nepalgunj, Pokhara, Kathmandu and Biratnagar. An inter-agency United Nations Human Rights Protection Working Group has been established under the chairmanship of the Representative of the High Commissioner. In addition to investigations and reporting, OHCHR-Nepal will advise and assist the National Human Rights Commission and civil society.

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I. Introduction

1. On 10 April 2005, the Government of the Kingdom of Nepal signed an agreement (the Agreement) with the High Commissioner for Human Rights concerning the establishment of an office in Nepal. On 20 April 2005 the Commission on Human Rights adopted resolution 2005/78, welcoming the signing of the Agreement and requesting the High Commissioner to establish an office in Nepal with a mandate to assist the authorities in promoting and protecting human rights, to monitor the situation of human rights and observance of international humanitarian law, to report to the Commission and to the General Assembly, and to work in cooperation with other United Nations entities in Nepal in this regard.

2. The High Commissioner appointed Ian Martin as her Representative to head the office. He arrived in Nepal on 7 May 2005 to head an initial team of human rights officers together with support staff.

3. The Agreement guarantees the staff of the Office of the High Commissioner for Human Rights in Nepal (OHCHR-Nepal) freedom of movement and access to relevant information, including access to all prisons, detention centres and places of interrogation, without prior notice. It provides that His Majesty's Government shall designate a high-level liaison entity with decision-making capacity responsible for communications with the office. The Cabinet approved the Agreement on 8 June 2005 and the Nepali language translation was to be published in early September.

4. The Agreement also provides that the office shall engage all relevant actors, including non-State actors, for the purpose of ensuring the observance of relevant international human rights and humanitarian law. The establishment of the office was welcomed publicly and in communications to the Representative by the leadership of the Communist Party of Nepal (CPN) (Maoist). In a public statement on 11 August 2005 the Chairperson of CPN (Maoist) reiterated this welcome and stated that CPN (Maoist) policy was to allow OHCHR-Nepal to travel to any part of the country affected by the conflict, to investigate incidents, to visit prisoners under the control of the Party and to interview members of its units.

5. The present report is submitted by the High Commissioner to the General Assembly pursuant to Commission resolution 2005/78. The information and analysis contained in the report is up to date as of end August 2005, and reflects the investigations of the initial OHCHR-Nepal team, prior to the deployment of full staffing and the establishment of regional offices.

II. Context

A. Political context

6. The last multiparty parliamentary elections in Nepal took place in 1999. In May 2002 Parliament was dissolved on the recommendation of the then Prime Minister, Sher Bahadur Deuba. In October 2002 His Majesty King Gyanendra Bir Bikram Shah Dev dismissed Prime Minister Deuba, and from October 2002 to February 2005 three successive appointed Prime Ministers either resigned or were dismissed by the King, in the absence of a sitting Parliament.

7. Nepal has experienced internal armed conflict since the CPN (Maoist) launched its so-called "people's war" in February 1996. At the beginning of the conflict security operations were conducted by the Nepal Police, later reinforced by the establishment of the Armed Police Force (APF). In November 2001 the Royal Nepalese Army (RNA) was mobilized to combat the growing insurgency, and in November 2002 the Nepal Police and APF were placed under the "unified command" of RNA for joint counter-insurgency operations. In 2001 and in 2003 ceasefires were declared and peace talks initiated between the Government and CPN (Maoist), with the last such negotiations breaking down in 2003. The armed conflict has since intensified, leaving an estimated 12,000 people dead.

8. On 1 February 2005 King Gyanendra again dismissed the Government, citing the failure to hold elections and combat the insurgency effectively. He invoked article 115 (1) of the Constitution to declare a state of emergency, suspending some fundamental rights including freedom of assembly and expression, the right to information and privacy and rights related to preventive detention. In its resolution 2005/78, the Commission called upon the Government urgently to restore the multiparty democratic institutions enshrined in the Constitution and to respect the rule of law, without exception. King Gyanendra revoked the state of emergency on 29 April 2005.

9. Since 1 February 2005, executive authority in Nepal is exercised directly by King Gyanendra, as Chairman of the Council of Ministers. In the absence of a Parliament, since 2002 legislative action takes the form of ordinances decreed by the King. Article 127 of the Constitution provides that if any difficulty arises in connection with the implementation of the Constitution the King "may issue necessary Orders to remove such difficulty"; however, it also requires that such Orders be laid before Parliament.

B. Applicable international human rights law and international humanitarian law

10. Through ratification and the application of customary international law, a broad body of international human rights and humanitarian law standards are applicable in Nepal. Nepal is a party to the International Covenant on Civil and Political Rights and its two Optional Protocols; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women and as a signatory to its Optional Protocol; the Convention on the Rights of the Child and as a signatory to both its Optional Protocol on the involvement of children in armed conflict and its Optional Protocol on the sale of children, child prostitution and child pornography; and the four Geneva Conventions, of 12 August 1949.

C. United Nations human rights treaty bodies

11. Nepal is currently preparing a report under the International Covenant on Civil and Political Rights, having submitted its last report in 1994, in full (see CCPR/C/79/Add.42), and has requested support from OHCHR in the preparation of

its second periodic report under the International Covenant on Economic, Social and Cultural Rights, the initial report having been considered in 2001 (see E/C.12/1/Add.66). Reports under the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women were both considered in 2004 (see CERD/C/64/CO/5 and A/59/38, paras. 179-225, respectively). Nepal's second periodic report under the Convention on the Rights of the Child was considered by the Committee on the Rights of the Child in June 2005 (see CRC/C/15/Add.261). The second periodic report under the Convention against Torture is scheduled to be considered by the Committee against Torture in November 2005, the initial report having been considered in 1994 (see A/49/44, paras. 138-147).

D. Special procedures of the Commission on Human Rights

12. Nepal issued several invitations to individual holders of special procedures mandates, but has not issued a standing invitation. During 2004 Nepal received more than twice as many communications under the special procedures as any other country.

13. Following invitations from the Government, four special procedures visited Nepal: the Working Group on Arbitrary Detention in 1996 (see E/CN.4/1997/4/Add.2); the Special Rapporteur on extrajudicial, summary or arbitrary executions in 2000 (see E/CN.4/2001/9/Add.2); the Working Group on Enforced or Involuntary Disappearances in December 2004 (see E/CN.4/2005/65/Add.1); and the Representative of the Secretary-General on the human rights of internally displaced persons in April 2005, whose report is due to be presented to the Commission at its sixty-second session. The Special Rapporteur on the question of torture was invited to visit Nepal from 10 to 17 September 2005 and his report is also expected to be presented to the Commission at its sixty-second session. A number of other special procedures mandates have requested invitations to visit Nepal, including: since 2003, the Special Representative of the Secretary-General on the situation of human rights defenders; since 2004, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and also since 2004, the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Government informed OHCHR in August 2005 that it was ready to invite the interested special rapporteurs at mutually convenient dates.

E. The Nepalese legal context

14. The fundamental rights section of Nepal's 1990 Constitution contains substantial human rights guarantees, although the Human Rights Committee in 1994 expressed concern about limitations of the non-discrimination clauses in article 11 of the Constitution (see CCPR/C/79/Add.2, para. 7) and deplored the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency, particularly article 115 of the Constitution (ibid., para. 9). The Treaty Act 1990 explicitly states that international treaties to which Nepal is a party shall prevail over national laws that are inconsistent with them.

15. Article 15 of the Constitution provides that "no persons shall be held under preventive detention unless there is a sufficient ground of existence of an immediate threat to the sovereignty or integrity or law and order situation of the kingdom of Nepal". Special legislation introduced or revived in the context of the current crisis provides sweeping powers to the security forces. The Public Security Act (PSA) 1989 and its second amendment of 1991 allow for a person who allegedly threatens the "sovereignty, integrity or public tranquillity and order" of Nepal to be detained for up to 90 days without charge by order of the civilian chief administrative officer of the district, the Chief District Officer. The detention period can be extended to six months by the Ministry of Home Affairs and to 12 months with the approval of an advisory board.

16. The Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2004 (TADO) replaced an act passed in 2002 which established special powers to check "terrorist and disruptive acts". The act provided for preventive detention of up to 90 days "upon appropriate grounds for believing that a person has to be stopped from doing anything that may cause a terrorist and disruptive act". It was subject to a two-year sunset clause, but with the dissolution of Parliament in May 2002 the act was replaced by an ordinance and the period of lawful preventive detention extended to up to one year; an initial six months may be ordered, normally by the Chief District Officer, and an additional six months on the approval of the Ministry of Home Affairs. In its 2005 report, the Working Group on Enforced or Involuntary Disappearances strongly criticized the operation of TADO and recommended that the law be rescinded. The Committee on the Rights of the Child, in its June 2005 concluding observations on Nepal, expressed deep concern that there were reports of children being detained under TADO and recommended that it be amended or repealed in light of international juvenile justice standards and norms.

17. The Constitution provides for the right of any Nepali citizen to file a petition in the Supreme Court to challenge any law that imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred by the Constitution. The Court was called upon to address serious constitutional questions during the state of emergency, including petitions to adjudicate non-suspended rights. The Court also issued writs of habeas corpus in a significant number of cases related to political and human rights activists detained under PSA, as well as persons detained under TADO. The Court has recently begun to consider the legality of a number of other Government actions including measures related to freedom of expression and freedom of association.

F. Government human rights commitments and coordination

18. In 2002 RNA, APF and the Nepal Police created "human rights cells" to address human rights concerns relating to their activities. In 2003 the Government established a Human Rights Promotion Centre in the Prime Minister's Office to coordinate the human rights-related activities of Government.

19. On 26 March 2004, the Government made a statement of commitments on the implementation of human rights and international humanitarian law, including the constitution of the High-level Human Rights Protection Committee to facilitate human rights monitoring and investigations by the National Human Rights Commission (NHRC) and to help implement its recommendations. In August 2005

the Government announced a reorganization of its coordination mechanisms regarding human rights, establishing three bodies: the Human Rights Protection and Promotion National Coordination Committee, chaired by the Minister for Foreign Affairs; the Human Rights Steering Subcommittee, chaired by the Chief Secretary; and the Human Rights Public Relations Committee, chaired by the Attorney-General. RNA stated its intention to upgrade the human rights cell to a directorate, headed by a brigadier-general, and to increase its staffing.

III. Respect for international human rights and humanitarian law

A. Respect for human rights and international humanitarian law in the context of the armed conflict

20. The Commission on Human Rights in its resolution 2005/78 expressed grave concern at serious breaches of humanitarian law committed by members of CPN (Maoist), which might constitute war crimes and crimes against humanity. It strongly urged CPN (Maoist) to immediately and unconditionally cease and renounce violence, disarm, and enter into negotiations with the genuine intention of rejoining the political process. It strongly condemned the repeated practice of members of CPN (Maoist) of unlawful killings, rape, extortion, forced displacement, mass abduction, and forced recruitment and labour targeted at civilians, as well as persecution and attacks against life, integrity and safety of political leaders and party members, human rights defenders, journalists, peace activists and others, and the recruitment and use of a large number of children. It urged the Government to take all necessary measures to prevent and put an end to extrajudicial and summary killings, all forms of sexual violence, enforced disappearance, arbitrary arrest, illegal incommunicado detention, as well as torture and other cruel, inhuman or degrading treatment or punishment.

1. State authorities

21. OHCHR has received reports of violations of human rights law and international humanitarian law allegedly committed by State authorities in the conduct of the armed conflict. These include extrajudicial executions, indiscriminate shooting or bombing leading to the deaths of civilians, threats to members of the local population accused of providing CPN (Maoist) with food or shelter, and the use of civilians under duress as informers, thereby placing them at risk of reprisals by CPN (Maoist). Persons accused by the security forces of being a CPN (Maoist) member or sympathizer were reportedly subjected to arbitrary arrest, long periods of preventive detention, torture, disappearance, or extrajudicial execution.

(a) Extrajudicial executions

22. The Special Rapporteur on extrajudicial, summary or arbitrary executions has raised serious concerns with the Government regarding alleged violations by security forces. OHCHR-Nepal is investigating a number of alleged executions of unarmed individuals under the control of security forces, as well as extrajudicial executions in the context of armed clashes; it is also following investigations and

court-martial proceedings undertaken by RNA in cases of past alleged extrajudicial executions.

(b) Disappearances

23. The Working Group on Enforced and Involuntary Disappearances, in its January 2005 report on its visit to Nepal, noted the dramatic rise in the number of enforced or involuntary disappearances in Nepal in the preceding two years. In 2004, the Working Group transmitted 136 new cases to the Government. During the Working Group's 2005 session 71 cases were closed on the basis of information provided by the Government and at the end of August 2005 there remained a total of 278 outstanding cases being considered. The Working Group also reported that NHRC had 1,619 disappearance cases to investigate, of which 1,234 were attributed to security forces. Since OHCHR established an Office in Kathmandu, cases of disappearance have been reported, including cases from 2005.

24. The Working Group recommended that the Government and the security forces should ensure that accessible, complete, accurate and up-to-date lists of detainees are kept, including of detainees in army barracks. RNA is in the process of establishing a national registry of those in its custody and provided two successive lists of detainees to OHCHR-Nepal, while acknowledging that these are not yet comprehensive. A number of disappeared persons were found to be in custody. RNA informed OHCHR-Nepal that investigative teams are currently visiting all regions in order to clarify outstanding cases.

(c) Arbitrary arrest, detention and rearrest

25. Arbitrary arrest and detention, closely linked to cases of disappearance, are among the most common violations reported. The Constitution provides that every person who is arrested and detained shall be produced before a judicial authority within 24 hours, excluding the time necessary for the journey from the place of arrest. However, those detained under TADO are not brought before a judicial authority unless and until habeas corpus petitions are lodged. OHCHR-Nepal found that in some cases formal detention orders were signed long after the arrest.

26. TADO provides that detainees should be held in a "humane place of detention". The Working Group stated that army barracks, where most TADO detainees have been held, "by any reasonable interpretation do not qualify as humane places of detention" (E/CN.4/2005/65/Add.1, para. 49). RNA told OHCHR-Nepal that it wished to transfer detainees to places of detention under the authority of the Ministry of Home Affairs, and was pressing for additional such facilities to be developed. The latest list provided by RNA of detainees held in army barracks, dated 26 July 2005, comprises 187 detainees, including significant numbers of persons initially detained in 2003 and 2004. OHCHR-Nepal urged that long-term detainees should be transferred immediately. The Ministry of Home Affairs stated to OHCHR-Nepal that it was unable to provide lists of those detained under PSA and under TADO, but that by the end of August no political detainees were detained under PSA and the total number of TADO detainees was approximately 1,200.

27. In August 2005, OHCHR-Nepal began visiting police cells, prisons and army barracks. In accordance with the Agreement, the visits were conducted without any prior notice, and human rights officers interviewed detainees in private, gathering

information about the legality of a person's detention, treatment and conditions of detention.

28. A number of cases of persons detained under TADO, as well as PSA, were the subject of habeas corpus petitions and in most instances the courts held the detention to be illegal and ordered the detainees released. In many cases the individual was immediately rearrested. Following the filing of contempt proceedings against the Government, on 27 June 2005 the Ministry of Home Affairs issued a circular conveying a ministerial-level decision of the Government that court orders are to be respected and that persons released are not to be immediately rearrested. OHCHR-Nepal is investigating the circumstances of a small number of subsequent rearrests.

(d) Torture

29. Numerous reports, including complaints to OHCHR-Nepal, indicate widespread use of torture, including torture of suspected Maoists and of criminal suspects, in both army barracks and police custody. In many cases, victims were severely and repeatedly beaten. Some victims testified to the use of electricity or of beatings on the soles of their feet.

30. OHCHR-Nepal intervened in a case in Kathmandu where an RNA sergeant detained and tortured an individual, apparently for private motives, and after the victim sought compensation he was rearrested in violation of a Supreme Court order and more severely tortured. A minor was beaten in the main Kathmandu police station shortly after he had been interviewed in the course of a visit by OHCHR-Nepal. Following an expression of concern from the office, the police investigated and took disciplinary action against the officers responsible. OHCHR-Nepal continues to interview alleged victims of torture and to urge the authorities to carry out effective investigations of their own and to punish the perpetrators.

31. The Compensation against Torture Act 1996 requires the State to compensate victims of torture and initiate action against the perpetrator. The first payment of compensation was made in July 2005 to a youth severely tortured by police four years ago. Many cases are outstanding. As noted in section II.D above, the Special Rapporteur on the question of torture was invited to visit Nepal in September 2005.

(e) The responsibility to protect the civilian population

32. Under international humanitarian law the security forces are required to take precautions to protect the civilian population in the course of military operations. There were multiple reports from civil society and the media of civilian deaths when RNA military operations failed to distinguish between civilian objects and military objectives, including through aerial bombardment from helicopters. Investigation by OHCHR-Nepal into the attacks by CPN (Maoist) against public transport in Chitwan and Kabhrepalanchok Districts (see para. 37 below) found RNA to have been in breach of the State authorities' humanitarian law responsibilities through failure to take precautions to protect the civilian population in the context of its repeated and regular use of public transport facilities. The office welcomed the willingness expressed by RNA to consider recommendations to amend its policy on the use of civilian transport.

(f) Accountability

33. RNA states that where human rights violations by military personnel take place, a board of inquiry is ordered and upon the findings and recommendations of the board the violator is brought to justice by a military court. RNA provided OHCHR-Nepal with a list of 44 cases of human rights violations from March 2002 in which judicial action was taken. OHCHR-Nepal requested details of these cases. Information so far made available indicates that many of these cases are of "extortion" or "misbehaviour", which would not be classified as grave violations of human rights. Punishment in cases involving grave violations appears light. An RNA major convicted by a court-martial of responsibility in the extrajudicial execution of 19 alleged Maoists on 17 August 2003 in Doramba, Ramechap District, was sentenced to two years' imprisonment and a junior officer was demoted.

34. RNA announced in August 2005 that it had taken action against two officers for sending armed troops in the passenger bus attacked by CPN (Maoist) on 10 June 2005 in Kabhrepalanchok. A military court demoted a captain to lieutenant and suspended the promotion of a lieutenant for one year "for not properly assessing the sensitivity of military operations".

35. RNA stated that it had introduced an internal disciplinary regulation to bar proven human rights violators from participating in United Nations peacekeeping operations. OHCHR will provide to the United Nations Department of Peacekeeping Operations information regarding individuals and units implicated in human rights violations, and officers who do not cooperate in accordance with the Agreement or who threaten or intimidate victims or witnesses, so as to facilitate a review of their suitability for deployment under the United Nations flag.

2. Communist Party of Nepal (Maoist)

36. Since the establishment of the office, OHCHR-Nepal has received information confirming that violations of international law by CPN (Maoist) include abductions, the killing of civilians, torture, the bombing of civilian buildings and the recruitment of children. The general population has suffered serious economic and other disruption resulting from frequent blockages of highways as well as *bandhs*, during which all professional and educational activity and motorized transport are ordered to stop by CPN (Maoist). Attacks on, and forced closure of, enterprises are becoming more frequent, depriving thousands of employees of the right to work.

37. On 6 June 2005, an attack by CPN (Maoist) on a public bus carrying a number of RNA personnel in the Madi Valley, Chitwan District, resulted in the death of at least 35 civilians and three RNA personnel, and many injuries. On 10 June 2005 a further attack took place on a public bus in the Narke Bazaar, Kabhrepalanchok District, causing the death of two civilians and four RNA personnel and many injuries. OHCHR-Nepal, having investigated these attacks, deplored the loss of life and injury caused and emphasized the primary responsibility of CPN (Maoist) for the killing of civilians in violation of international humanitarian law.

38. On 14 June 2005, six civilians — three women, two men and a 1-year-old child — were abducted, abused and murdered in the Banbehda area of Kailali District by unidentified perpetrators. All but one of the victims were related to Armed Police Force personnel. The APF report stated that CPN (Maoist) was the suspected perpetrator. A statement by the regional commander of CPN (Maoist)

denied this. The office's investigation could not reach a definite conclusion regarding the identity or affiliation of the perpetrators. OHCHR-Nepal called upon CPN (Maoist) to conduct an inquiry to establish whether any of its cadres were involved in the killings, and to make its findings public.

39. On 7 August 2005, CPN (Maoist) forces attacked an RNA encampment located at Pili, Kalikot District. The clash involved extensive loss of life on both sides. RNA initially stated that 40 RNA soldiers had been killed, the majority of whom it said were shot after having surrendered, and that an officer was mutilated. Some 60 RNA soldiers were captured. CPN (Maoist) denied allegations of executions and mutilation. OHCHR-Nepal urged CPN (Maoist) to treat captured RNA soldiers fully in accordance with international humanitarian law and recommended to RNA that it have independent forensic examinations conducted; such examinations were carried out by the Department of Forensic Medicine at Tribhuvan University.

40. OHCHR-Nepal received reports of the abduction by CPN (Maoist) of hundreds of civilians, many of them children, including for political indoctrination and forced recruitment. OHCHR-Nepal submitted to the CPN (Maoist) leadership 25 abduction cases involving over 60 individuals, including several children, emphasizing that such abductions are serious violations of international humanitarian law. OHCHR-Nepal also raised with CPN (Maoist) cases where persons were reported to have been killed after being abducted, as well as threats to the lives of teachers, journalists and local officials. In one instance CPN (Maoist) subsequently assured a threatened individual that he would not be harmed. Targeted killings of unarmed civilians attributed to CPN (Maoist) have not been clarified in spite of requests by OHCHR-Nepal for information. For example, on 21 June 2005 the dismembered body of a man abducted two days earlier was found in a public road with a note in the name of CPN (Maoist); OHCHR-Nepal has yet to receive any response from CPN (Maoist) regarding this killing.

41. In June 2005, the CPN (Maoist) central leadership publicly announced a commitment to ensuring that action would not be taken against unarmed civilians. In July regret was expressed in two separate statements for the killing of civilians in the Chitwan bus attack. CPN (Maoist) provided OHCHR-Nepal with the report of an investigation by its Central Committee into the Chitwan attack, which lays the responsibility for the attack on five of its personnel who, it stated, were detained. In August, in the context of the Pili attack, the Party restated its commitment to respect human rights and humanitarian law and gave public and private assurances that RNA personnel taken prisoner in Pili would be held in safety and soon released.

3. Vigilante groups

42. During 2005, self-defence or "vigilante" groups were formed in a number of districts. Such groups, created in areas where CPN (Maoist) has been active, often state that their primary aim is the defence of their communities in response to abuses and crimes committed by CPN (Maoist). These groups are reported to have committed serious human rights abuses and other crimes in the context of the armed conflict. OHCHR-Nepal is investigating reports that some groups have the direct or indirect support of the security forces.

4. Groups of special concern

(a) Internally displaced persons

43. Given growing concern that the conflict has given rise to increasing internal displacement, the Representative of the Secretary-General on the human rights of internally displaced persons (IDPs) undertook a mission to Nepal in April 2005. His preliminary findings were discussed with the Government and his report will be presented to the Commission at its sixty-second session.

44. The number of IDPs in Nepal is unknown for reasons that include fear among IDPs of identifying themselves as such, the absorption of many IDPs into their places of displacement, and patterns of economic migration into India.

45. The human rights concerns that cause IDPs in Nepal to leave their homes — killings, the threat of forced recruitment or abduction, extortion of food or money, threats, economic impoverishment — are generally the same that affect people who have not yet departed. Maoist retaliation against violence by vigilante groups has contributed to sudden mass displacement and occasionally led to the establishment of ad hoc camps. Once displaced, IDPs face a range of human rights concerns, including a lack of personal identification documents, limited access to free education and health services, poor employment prospects, the loss of property and other wealth, inadequate housing, increased vulnerability of children and women to trafficking, forced labour, and the effective loss of voting rights.

(b) Children

46. The Committee on the Rights of the Child, in its June 2005 consideration of the implementation of the Convention on the Rights of the Child in Nepal, noted with grave concern reports of the abduction and conscription of children for political indoctrination and for use as combatants, informants, cooks or porters, and as human shields, by CPN (Maoist). It expressed equal concern about reports of disappearances and arbitrary detention and of Government forces allegedly using children as spies and messengers (see CRC/C/15/Add.261, para. 81).

47. Both reports are corroborated by complaints made directly to OHCHR-Nepal. In many instances, under the slogan "one family, one boy", CPN (Maoist) is reported to demand that one recruit be provided to its forces from each family, and children are often forcibly recruited in this way. OHCHR-Nepal has no evidence of the recruitment of children by RNA, but called for the investigation of reports of children being used as informants by the security forces. Reports were also received of the enrolment of children into vigilante groups.

48. In some instances, children abducted or forcibly recruited by CPN (Maoist) have either been captured by RNA or have escaped from CPN (Maoist) and been subsequently arrested by the security forces. Some of these children have been detained under TADO for long periods and without judicial oversight. Reports indicate that other children have escaped or deserted from CPN (Maoist) but are afraid to return to their homes for fear of arrest by the security forces.

49. Access to education has been severely limited by the armed conflict. Attendance for the past school year was estimated at only 100 days for children in highly affected areas of the country. The abduction of pupils and teachers for political indoctrination and rallies, school closure by CPN (Maoist), threats by CPN

(Maoist) against teachers and school administrations that charge fees, the occasional use of school buildings as army barracks or temporary shelters by both the security forces and CPN (Maoist), the destruction of schools during military operations, and the actual killing of teachers and pupils all limit respect for children's rights, including the right to education.

50. OHCHR-Nepal, in collaboration with UNICEF and the United Nations Country Team, will be considering how to provide information to the mechanism on children and armed conflict to be established under Security Council resolution 1612 (2005).

(c) Women

51. The effect of the conflict on women has not received sufficient recognition. OHCHR-Nepal is investigating reports of rape of women in rural communities by security forces, CPN (Maoist) personnel and vigilante groups, as well as sexual violence against women in custody or committed during search operations, including as a means of torture, and sometimes accompanied by disappearance or killing. Victims of sexual violence appear to have only very limited access to medical facilities and counselling. Similarly, compensation for widows and assistance for their children's education appear to be seriously inadequate.

(d) Human rights defenders

52. Human rights defenders were among those particularly targeted by the arrests, detentions and travel restrictions imposed by the Government after 1 February 2005, as well as being sometimes targeted by CPN (Maoist), and continue to be the subject of threats reported to OHCHR-Nepal. In August 2005, in Udayapur District, representatives of local human rights organizations were reportedly criticized and threatened with having their activities ended by the Chief District Officer and the RNA local commander for attending a meeting called by CPN (Maoist) on requirements for working in areas where CPN (Maoist) is active.

53. The work of human rights defenders is essential in monitoring, addressing and recording the ongoing human rights situation. OHCHR is giving high priority to protection of the role and situation of human rights defenders, whether working as individuals or collectively in organizations, as provided under the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

(e) Other targeted and vulnerable groups

54. In the context of long-standing caste and ethnic discrimination (see paras. 65 and 66 below), Dalits and members of indigenous nationalities experience disproportionately victimization and harassment by State authorities and CPN (Maoist), with the former suspecting the groups to be sympathetic to the insurgency and the latter trying to coerce members of the groups to join or support them. As a result, those who have no such affiliation fall under the suspicion of the security forces and are liable to be particular targets of conflict-related human rights violations.

B. Democratic rights

55. The Commission on Human Rights in its resolution 2005/78 called upon the Government to immediately reinstate all civil and political rights, to cease all state of emergency-related and other arbitrary arrests, to lift the far-reaching censorship, to restore freedom of opinion, expression and the press as well as the freedom of association, to immediately release all detained political leaders and activists, human rights defenders, journalists and others, and to allow all citizens to enter and exit the country freely.

1. Arbitrary detention, freedom of movement and fair trial

56. Although the state of emergency was lifted on 29 April 2005, when OHCHR opened its office hundreds of those detained under PSA after 1 February 2005 were still in detention. Political activists and human rights defenders continued to be intercepted at the airport and prevented from travelling abroad. These restrictions on freedom of movement appeared to be ordered outside normal legal procedures and without due process. In almost all cases brought before it, the Supreme Court found the detentions illegal and ordered release, although a number of those released were immediately rearrested. OHCHR-Nepal expressed its concern that these rearrests appeared to amount to a policy to defy and undermine the judiciary. Almost all detainees in this category were released by July.

57. In March 2005 a Royal Commission for Control of Corruption (RCCC) was created by ordinance. The creation of RCCC was widely criticized as being outside existing constitutional and judicial frameworks, when the Commission for the Investigation of Abuse of Authority established under the Constitution already had the mandate to investigate corruption. On 25 April 2005 former Prime Minister Deuba was arrested and detained. On 26 April 2005, he was convicted by RCCC, together with former Minister Prakash Man Singh, of corruption in the Melamchi water supply project, of which the Asian Development Bank (ADB) was a major funder. An investigation by the Integrity Division of the Office of the Auditor General of ADB found no evidence of corruption. RCCC did not allow the ADB investigation report to be admitted as evidence. OHCHR-Nepal is assessing these convictions and the operation of RCCC in relation to international standards of fair trial guaranteed by the International Covenant on Civil and Political Rights, to which Nepal is a party.

2. Freedom of assembly and freedom of expression

58. Restrictions on public demonstrations in parts of Kathmandu remain in effect through orders of the local administration, despite the lifting of the state of emergency. Public gatherings challenging these restrictions have resulted in short-term arrests of students, political activists, journalists, civil society leaders and others. Six student leaders were arrested on 14 July 2005 and charged under the Public Offence and Security Act 1970 after they tore out pictures of the royal family, in a protest against their inclusion in school textbooks, and were alleged to have obstructed police. On 9 August the Supreme Court held that their detention was illegal and ordered their release. On 27 July 2005, student leader Gagan Thapa was arrested and eventually charged with violating the Offences Against the State Act 1989 which punishes with up to three years' imprisonment actions deemed directly or indirectly to foment "hatred, malice or contempt towards the King or the

Royal Family". He had reportedly shouted slogans against the King during a peaceful public demonstration on 25 July. On 14 August he was released on bail. OHCHR-Nepal expressed concern to the Attorney-General regarding the apparent use of the Offences Against the State Act to restrict freedom of expression, in possible violation of international standards of freedom of expression guaranteed by the Covenant.

59. Following the declaration of the state of emergency, the Government banned for six months any "interview, article, news, notice, view or personal opinion that goes against the letter and spirit of the Royal Proclamation of 1 February 2005 and that directly or indirectly supports destruction and terrorism", and censorship was enforced by the security forces. Although direct censorship is no longer in force and the media in Kathmandu enjoy considerable freedom of expression, there continue to be frequent reports of threats to journalists throughout the country, from the security forces and the civilian administration. Journalists are also victims of abductions and serious threats from CPN (Maoist). The Government banned the broadcasting of news on FM radio stations and attempted to revoke the licence of a leading FM radio station that resumed broadcasts in early August. On 10 August the Supreme Court issued an interim order directing the Government not to implement the revocation of the license until a further hearing.

60. The Ministry of Information and Communications is reviewing the existing media law. OHCHR-Nepal will examine any revised legislation for conformity to international standards on the right to freedom of opinion and expression.

3. Freedom of association

61. On 14 July 2005 the King promulgated an ordinance making significant changes to the Social Welfare Act 1992. The ordinance provides for the Social Welfare Council to frame and implement a code of conduct for social organizations or institutions and to suspend or dissolve any organization that does not observe this code. The NGO Federation of Nepal expressed concern that the code would be used to undermine the independence of NGOs. The Minister for Women, Children and Social Welfare assured OHCHR-Nepal that there would be wide consultation with NGOs, donors and the United Nations on the draft code. The office drew the attention of the Government to the principles of freedom of association for human rights defenders set out in the report of the Special Representative of the Secretary-General on the situation of human rights defenders (A/59/401), which focused special attention on freedom of association because of the multiple ways in which this right is restricted and its centrality to the work of defenders.

62. A July 2005 amendment to the Civil Service Ordinance imposes restrictions on the right to freedom of association of civil servants, including the annulment of existing organizations of civil employees, and was the subject of a complaint to the Committee on Freedom of Association of the International Labour Organization (ILO).

63. A report of the ILO Conference Committee on the Application of Standards, reflected in the provisional record of the ninety-third session of the International Labour Conference, held in June 2005, relates the concerns of Worker members that following 1 February 2005, "nearly two dozen trade union activists" were among the hundreds detained, "trade union offices were monitored, searched and at times closed down, union meetings had been forbidden and rallies had been banned, while

registration of several union organizations had been refused".[1] Nepal is also the subject of a complaint by the International Confederation of Free Trade Unions to the ILO Committee on Freedom of Association concerning trade union rights violations in Nepal. The Government stated to OHCHR-Nepal that some of the complaints sent to ILO were false.

C. Long-standing human rights concerns

64. Economic impoverishment, severe social inequalities and discrimination are among the human rights concerns that predate the crisis. They are, however, relevant to the conflict both because they are seen by some to be among its root causes, and because the armed conflict itself has aggravated an already serious situation. The rights to health, to food and to adequate shelter, and other economic, social and cultural rights, are all at risk.

1. Caste and ethnic discrimination

65. Centuries-old practices in Nepal regulate interactions between members of lower and higher castes, as well as between ethnic groups, through a strict hierarchy. Dalits, the lowest caste, are defined by the National Dalit Commission as "those communities who, by virtue of caste-based discrimination and untouchablity, are most backward in the social, economic, educational, political and religious spheres, and are deprived of human dignity and social justice". In practice, their access to land ownership, citizenship, and health and education services, among others, is limited. Nepal also has over 60 different indigenous nationalities, or Janajatis, who are similarly disadvantaged. These groups are marginalized socially and politically with little say in decision-making within the State.

66. The Government's Civil Service Ordinance 2005 made provisions for affirmative action regarding Dalits and Janajatis. In its 2004 concluding observations, the Committee on the Elimination of Racial Discrimination welcomed State action in favour of Dalits, nationalities and indigenous peoples and noted the establishment of institutions to combat discrimination, including the National Dalit Commission and the National Foundation for the Development of Indigenous People and Nationalities (CERD/C/64/CO/5, paras. 4 and 5). The Committee nevertheless expressed multiple concerns including at allegations of ill-treatment, ineffective protection and discrimination against these groups by law enforcement officials (ibid., para. 15). NGOs urged that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should visit Nepal at the earliest opportunity.

2. Gender discrimination and trafficking

67. Gender inequality exists in almost every facet of Nepalese society, including under the law, in the economy and in the family. Under Nepalese legislation, for example, daughters do not have equal inheritance rights with sons, divorced women do not benefit from property rights, and Nepalese citizenship can be passed on to children only by fathers. Despite legal prohibition, the sexual exploitation of girls in the form of traditional and religious customs still exists. Women members of

[1] International Labour Conference, ninety-third session, Geneva, 2005, Provisional Record, No. 22, part two, p. 64.

marginalized groups face multiple discrimination on the basis of both caste or ethnicity and gender.

68. Trafficking in women and girls — for domestic work, forced begging, marriage, the sex trade and carpet weaving — is a critical problem. Inequality, poverty and population displacement are all aggravating factors and trafficking has been exacerbated further by the conflict.

IV. OHCHR activities

69. Since March 2003, OHCHR has deployed a Senior Human Rights Adviser to the office of the United Nations Resident Coordinator in Nepal. In June 2004 the first two OHCHR international advisers were provided to assist NHRC under a joint OHCHR-UNDP capacity development project; they were joined in early 2005 by two further international advisers. In response to the human rights violations under the state of emergency, a Human Rights Information Unit was established under the Resident Coordinator as an extension of the role of the Senior Human Rights Adviser.

70. Within a week of signature of the Agreement, an OHCHR needs-assessment team arrived in Nepal to begin preparations to establish an office. In early May 2005 the Representative of the High Commissioner and six human rights officers joined the staff already in place under the previous projects, together with security and administrative staff. With the valuable support of the Resident Coordinator and the United Nations Country Team, OHCHR initiated activities envisaged in the Agreement. Plans for the office to comprise approximately 50 international staff, including United Nations Volunteers, together with national professional and support staff, were presented to Member States. Member States have been generous in their response, and while some contributions are yet to be formally pledged, indications are that the necessary funding will be available for at least the first year of the operation.

71. OHCHR-Nepal is establishing its headquarters in Kathmandu, and its first regional office in Nepalgunj, covering the far-western and western regions of Nepal. Regional offices will also be opened in Pokhara and Biratnagar, covering the mid-western and eastern regions of the country, respectively.

72. The office is mandated to advise the Resident Coordinator and the Country Team on human rights protection and capacity-building and to coordinate resulting human rights activities. To this end an inter-agency Human Rights Protection Working Group has been established under the chairmanship of the Representative, and will establish subgroups on child protection, protection of IDPs and other priority human rights protection issues.

73. The Agreement mandates OHCHR-Nepal to advise and assist NHRC, replacing a December 2004 memorandum of understanding under which such technical assistance was previously provided. NHRC was established in 2000, in accordance with the Human Rights Commission Act 1997, and the terms of the first commissioners expired in May 2005. The appointment of the new commissioners, in a situation where the procedure set out in the 1997 Act could not be followed owing to the dissolution of Parliament and was amended by ordinance, has been the subject of controversy. An OHCHR mission was undertaken to review these developments,

assess how the present context may impact the work of NHRC, and make recommendations on future assistance.

74. The Agreement states that the office shall provide advisory services and support in the areas of its competence to representatives of civil society, human rights NGOs and individuals. The office has given the highest priority to establishing close working relationships with NGO partners without whose cooperation it would be unable adequately to fulfil its own mandate.

V. Conclusion

75. Nepal has been experiencing a grave human rights crisis. The willingness of His Majesty's Government to agree to the establishment of an Office of the High Commissioner for Human Rights and the commitments of cooperation by both parties to the conflict offer the hope that human rights and international humanitarian law may be better respected in practice. The office is committed, under the Agreement, to operate as a centre for consultations and dialogue, providing a climate of trust. It can thus make its contribution to the lasting peace that is hoped for by the people of Nepal, and that is the essential foundation for the long-term protection and promotion of human rights in the country.